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No. 189

In the Supreme Court of the United States

OCTOBER TERM, 1944

THE CONNECTICUT LIGHT AND POWER COMPANY,
PETITIONER

v.

FEDERAL POWER COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE FEDERAL POWER COMMISSION

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OPINIONS BELOW

The opinion of the Court of Appeals for the District of Columbia (R. III, 1170) is reported in 141 F. (2d) 14. The Federal Power Commission's findings, opinion and order (R. I. 63–85) are reported in 44 P. U. R. (NS) 170.[1]

[1] The record in this case consists of both printed and unprinted material. The printed record (which was made an appendix to petitioner's brief below) is in three volumes, and will be cited herein as "R. I, R. II or R. III." The unprinted record, which was filed with the court below and has also been filed with this Court, consists of the transcript of the proceedings before the Commission (cited herein as "Tr.") and the exhibits (cited as "Ex.").

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia was entered on February 28, 1944 (R. III, 1178). A petition for rehearing was denied on March 25, 1944 (R. III, 1195). The petition for a writ of certiorari was filed on June 23, 1944, and was granted on October 9, 1944. The jurisdiction of this Court rests upon Section 313 (b) of the Federal Power Act (49 Stat. 860, 16 U. S. C. 825*l*), and Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether there was warrant in the record and a reasonable basis in law for the determination of the Federal Power Commission that petitioner "was and continues to be * * * a public utility" within the meaning of Section 201 (e) of the Federal Power Act.

STATUTE INVOLVED

The relevant provisions of the Federal Power Act of 1935 are set forth in Appendix A, *infra*, pp. 56–66.

STATEMENT

On August 26, 1935, the Federal Power Act became effective. On January 7, 1941, the Federal Power Commission issued an order (R. I, 48–52) directing petitioner to show cause "why it is not now, and has not been since August 26, 1935",

a "public utility" within the meaning of the Act, and why it had not complied with the Uniform System of Accounts prescribed by the Commission for such public utilities, effective January 1, 1937, and the Commission's orders supplemental thereto (R. I, 35–36, 40–47). Following an extensive hearing, the Commission, on May 13, 1942, found that petitioner was then, and had been at all times since August 26, 1935, a "public utility" within the meaning of the Act (R. I, 63–82). The Commission accordingly directed petitioner to reclassify and keep its accounts in accordance with the Commission's Uniform System of Accounts (R. I, 83). A petition for rehearing (R. I, 7–33) was denied on June 23, 1942 (R. I, 84–85). On petition for review (R. I, 1–33), the court below affirmed the Commission's order (R. III, 1178).

The undisputed facts shown by the record are as follows:

Petitioner owns and operates an electric utility system in the State of Connecticut (R. I, 63, 86; Ex. 70). Until two days before the Federal Power Act became effective, petitioner was a member of an interstate power pool, known as the Connecticut Valley Power Exchange (R. I, 70; R. II, 296),[2] which utilized the following lines for the interchange of energy: Petitioner's main system

[2] The operations of this Exchange are described in *Hartford Electric Light Co.* v. *Federal Power Commission*, 131 F. (2d) 953 (C. C. A. 2), certiorari denied, 319 U. S. 741. In addition to The Hartford Electric Light Company and petitioner, the Exchange included Turners Falls Power and Elec-

was connected near New Britain, Connecticut, with the Hartford-Falls Village 66,000-volt double-circuit line ("C. P. 1 and C. P. 2 lines") of The Connecticut Power Company (R. III, 1113; Ex. 38; R. II, 295–297).[3] This line interconnected at its east end, through a substation in Hartford, with the Hartford-Agawam line running northward to Massachusetts[4] and at its west end, in Falls Village, Connecticut, with a line extending to Poughkeepsie, New York.[5] Over these lines, Central Hudson Gas and Electric Company and the members of the Connecticut Valley Power Exchange (including petitioner) interchanged energy among their systems in New York, Connecticut, and Massachusetts (R. I, 65–66; R. II, 276–279, 294–295).

In addition to the New Britain connection, pe-

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tric Company (R. II, 294–295). The transmission facilities of The Connecticut Power Company, a non-member, were used in Exchange operations under a toll contract (R. III, 1090–1096).

[3] A diagram of this system has been prepared by the staff of the Commission, and is set forth in Appendix C, *infra*, p. 70.

[4] R. I, 65; R. III, 1113; Ex. 38, R. II, 378–380, 394–396; R. III, 1119–1122. The Hartford-Agawam line was owned in Connecticut by The Connecticut Power Company and in Massachusetts by the Turners Falls Power & Electric Company (R. I, 396).

[5] R. II, 278–279, 394; R. III, 1113, Ex. 38. That line was owned in Connecticut by The Connecticut Power Company and in New York by the Central Hudson Gas & Electric Company (R. II, 396).

titioner maintained separate connections for taking energy from the C. P. 1 and C. P. 2 lines, to supply the major requirements of its East Hampton and Winsted districts (R. II, 397–402, 409, 473–474), and the entire requirements of its Bristol district (R. I, 68–69, 400–401).

For its East Hampton district, petitioner's twelve mile 13,800-volt line took energy from the C. P. 1 and C. P. 2 lines (through intervening facilities of The Connecticut Power Company) at "pole 110" in Portland to petitioner's step-down substations in East Hampton, Colchester, and Leesville, Connecticut, where the voltage was reduced and the energy distributed over petitioner's lines serving those communities and adjacent areas.[6]

For its Winsted district, petitioner's facilities took energy from the C. P. 1 and C. P. 2 lines through intervening facilities of The Torrington Electric Light Company in Torrington, after the voltage had been stepped-down to 2,300 volts.[7] Such facilities of petitioner included a step-up substation at Torrington, a ten-mile 27,600-volt, double-circuit line, and a step-down substation at Winsted where the voltage was reduced to 4,600 volts and the energy distributed over petitioner's lines serving Winsted and environs.[8]

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[6] R. I, 66–67; R. II, 491–493, 409, 401–402, 473–474, 392–397, 231–233; Ex. 26.

[7] R. I, 67; R. II, 394–395, 397, 399–400; Exs. 27, 80A.

[8] R. I, 68; R. II, 494; Exs. 79, 80A, 27, 60.

At Bristol, petitioner's facilities included an outdoor step-down substation with transformers and appurtenant facilities (including a synchronous condenser), and lines from petitioner's substation to supply consumers in Bristol and environs.[9] Energy was delivered at 66,000 volts over a short tap from the C. P. 1 and C. P. 2 lines to petitioner's substation at which the voltage was stepped-down to 2,300, 4,600, and 13,800 volts, and supplied to multiple circuits leading from the substation to serve consumers in and around Bristol.[10] The synchronous condenser was operated to maintain the "power factor" required by The Connecticut Power Company under its power-supply contract with petitioner (R. I, 69, 75; R. II, 228–230, 519–520, 528–529; R. III, 1040).

Considerable evidence was introduced at the hearing, showing that Massachusetts energy flowed frequently, for substantial periods and in substantial amounts, over the C. P. 1 and C. P. 2 lines, alone or in conjunction with Connecticut energy, to petitioner's facilities in its East Hampton, Winsted and Bristol districts.[11]

Apart from the facilities taking energy from the C. P. 1 and C. P. 2 lines, petitioner's main system was connected in the southeastern corner of Connecticut with the facilities of the Borough of

[9] R. I, 69; R. II, 493, 519. A simplified illustrative sketch of the Bristol substation, prepared from exhibits in the record, is set forth in Appendix D, *infra*, p. 69.

[10] R. I, 65, 68–69; R. II, 410, 493, 519–529; Ex. 82.

[11] R. II, 388–474, 584–590, 474–543; R. III, 710–712; Exs. 61–62; R. III, 1119–1120; R. II, 279–280, 293–294.

Groton, and petitioner sold energy generated at its Montville plant to the Borough which resold it in part (with petitioner's knowledge) to a company serving the entire requirements of Fishers Island, New York.[12] Such energy was transmitted over petitioner's 33,000-volt double-circuit line extending from its step-up substation at Montville to a substation at Groton Long Point, where the voltage was reduced to 6,900 volts and the energy conveyed to Fishers Island, New York, over facilities of the Borough and the company serving that island[13] (R. I, 64–65, 74, 77; R. III, 1141, 1049–1051; R. II, 462, 532–542, 180–207).

Seeking, as the circumstances clearly indicate, to avoid regulation by the Federal Power Commission (R. II, 359–363, 145–148),[14] petitioner, on August 24, 1935, two days before the Act took effect, severed the connection of its lines at New Britain with the C. P. 1 and C. P. 2 lines.[15] For

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[12] R. I, 74; R. III, 640, 642–643, 737; R. II, 357, 361, 462–464.

[13] On the basis of these operations the Company serving Fishers Island admitted its "public utility" status (R. III, 1048–1049; see R. I, 78).

[14] Proponents of the Act, by way of illustrating the accounting abuses sought to be remedied by the Act, specifically cited, during the debates in the House, write-ups aggregating $21,000,000 in the accounts of petitioner and two companies (Northern Connecticut Power Company and Connecticut Electric Service Company) since merged into petitioner (Moody's *Public Utilities*, 1942; p. 1151; *id.* 1936, p. 2549). See 79 Cong. Rec. 10421–10424.

[15] Petitioner severed this interconnection on the Saturday afternoon before the Monday on which the Act was approved by the President (R. II, 295–297). The Connecticut Power Company's lines were severed at the state boundary the next

similar reasons petitioner, in June 1939, severed its East Hampton connection,[16] in June 1941 discontinued taking energy for its Winsted district supplied by The Connecticut Power Company at Torrington,[17] and in February 1941 brought about the termination of the sale of energy by the Borough of Groton to Fishers Island.[18] However, presumably due to contractual commitments[19] and the difficulty of providing an alternative supply (R. II, 371), Bristol was not disconnected and is still supplied with energy from the C. P. 1 and C. P. 2 lines.[20]

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day, Sunday, August 25 (R. III, 1105–1106; R. II, 330–331). When satisfied that this had been done, petitioner reconnected at New Britain and thereafter engaged in intrastate pooling operations with The Hartford Electric Light Company (R. II, 297–299, 386). To avoid losing $100,000 a year (R. III, 1108), the interstate Exchange resumed operations on May 29, 1936, without petitioner, which had again severed its New Britain interconnection (R. II, 300). The members of the Exchange thereafter were The Connecticut Power Company, the Turners Falls Power & Electric Company, and the New England Power Company (R. III, 1084–1085). These companies do not contest their "public utility" status. R. II, 258; *Western Massachusetts Electric Company*, F. P. C. Op. No. 85, 46 P. U. R. (NS) 215, 217; *Connecticut River Power Company, et al.*, 2 F. P. C. 539; *New England Power Company, et al.*, 2 F. P. C. 612.

[16] R. I, 66, 73; R. II, 361–363; R. III, 764–765.

[17] R. II, 145–148, 138.

[18] R. I, 107–115; R. II, 178–179, 195–197; R. III, 1052–1053, 1145–1149.

[19] Petitioner's contract to purchase its power requirements for Bristol from The Connecticut Power Company is not terminable until January 1, 1947 (R. III, 1042).

[20] R. I, 69, 74; R. II, 369–371.

The Commission found that certain designated facilities of petitioner in its East Hampton and Winsted districts, prior to the disconnections, were "facilities for the transmission of electric energy in interstate commerce" (R. I, 67–68). It further found that petitioner's facilities for supplying Groton (until sales to Fishers Island were discontinued on February 28, 1941) were facilities for both the transmission of electric energy in interstate commerce and the sale of electric energy at wholesale in interstate commerce (R. I, 64–65). Finally, the Commission found that petitioner's synchronous condenser, step-down transformers and appurtenant facilities at Bristol "were and are facilities for the transmission of electric energy in interstate commerce" (R. I, 69). Upon the basis of these findings the Commission concluded that petitioner "was and continues to be * * * a public utility" under the Act (R. I, 65, 67, 68, 69).

SUMMARY OF ARGUMENT

Section 201 (b) of the Federal Power Act gives the Commission jurisdiction over "all facilities" for the "transmission of electric energy in interstate commerce" and the "sale of electric energy at wholesale in interstate commerce", but not, "except as specifically provided", over "facilities used in local distribution or only for transmission of electric energy in intrastate commerce". Under Section 201 (c) "electric energy

shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof". Since Congress did not define "transmission" or "facilities", the application of these terms to a particular situation must necessarily have been "assigned primarily" to the Federal Power Commission. (Cf. *National Labor Relations Board* v. *Hearst Publications*, 322 U. S. 111, 130–131.) The Commission's determination that petitioner "was and continues to be" a public utility under the Act has warrant in the record and a reasonable basis in law, and is supported by the principles established in *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U. S. 61, and *Hartford Electric Light Co.* v. *Federal Power Commission*, 131 F. (2d) 953 (C. C. A. 2), certiorari denied, 319 U. S. 741.

The Commission's finding that out-of-state energy was received over petitioner's facilities at Bristol is concededly supported by substantial evidence. Its finding that certain equipment at petitioner's Bristol substation constitutes "facilities for the transmission of electric energy in interstate commerce, as distinguished from "facilities ued in local distribution", is supported by the expert testimony of Commission engineers, and is based upon concepts contained in decisions of this Court familiar to the Congress which passed the Act.

That petitioner is engaged solely in the business of retail distribution at Bristol does not exempt it from the Act since, as this Court ruled in the *Jersey Central* case, the "determinative fact is the ownership of facilities used in transmission", not the kind of business in which a company is engaged. Compare Section 206 (b) of the Act. The so-called "but clause" in Section 201 (b) of the Act does not reduce the preceding grant of jurisdiction over "all facilities" for interstate transmission. This clause was inserted in order to emphasize that ownership or operation of the facilities described therein does not make a person a "public utility" under the Act, and to confirm the Commission's regulatory authority specifically granted elsewhere in the Act over such facilities when owned by a "public utility". Moreover, facilities devoted to any of the functions named in the "but clause" fall within it only if they are devoted exclusively to such function.

By taking jurisdiction over petitioner, the Commission is not invading the area reserved for state regulation. The Act has multiple purposes, including regulation of the interconnection and coordination of facilities; control over disposal, merger, or consolidation of facilities; control over the acquisition or issuance of securities; and maintenance of adequate interstate service—all of which were treated by Congress as independent subjects of regulation.

The Commission properly ordered petitioner to comply with its general accounting requirements for the period in which petitioner was a "public

utility." Regardless of petitioner's present status, it was a "public utility" until June 1941 by virtue of its ownership and operation of certain facilities at East Hampton, Winsted, and Groton. The termination of petitioner's status as a "public utility" could not cancel the obligation to comply with the accounting orders for the period in which petitioner was a public utility. While a company is not required to continue the ownership or operation of the facilities which make it a "public utility", it may not by voluntary termination of such status avoid the obligations that accrued during its status. Fulfillment of the obligation would not, as petitioner contends, be of "no practical benefit", for consumers and investors have a continuing interest in the elimination of any inflation in petitioner's accounts.

The considerations which justify the Commission's finding of jurisdiction over the Bristol facilities are applicable to the East Hampton and Winsted facilities. The Montville-Groton facilities are not exempt from the Commission's jurisdiction even though used in connection with the sale of energy to a municipal corporation. Even if the Act exempts sales to municipalities from regulation, it expressly grants jurisdiction over facilities for interstate transmission. Such facilities cannot be exempted from the Act merely because an additional ground for jurisdiction—facilities for sales—may not be present. The Commission has consistently construed the Act as applicable to interstate wholesale sales to municipal-

ities, and the legislative history indicates that such sales were intended to be subject to federal regulation.

Finally, there is no merit in petitioner's contention that, since the amount of energy transmitted to Fishers Island was relatively small, the rule of *de minimis* defeats the Commission's jurisdiction. There is no basis in the Act for the inference that Congress intended to make the Commission's jurisdiction depend on any particular volume of energy transmitted in interstate commerce.

ARGUMENT

Section 301 (a) of the Federal Power Act authorizes the Commission to "prescribe a system of accounts to be kept by * * * public utilities," which are defined by Section 201 (e) to include "any person who owns or operates facilities subject to the jurisdiction of the Commission" under Part II of the Act. Section 201 (b) of Part II gives the Commission jurisdiction over "all facilities" for the "transmission of electric energy in interstate commerce" and "the sale of electric energy at wholesale in interstate commerce," but not, "except as specifically provided", over "facilities used in local distribution or only for transmission of electric energy in intrastate commerce". And Section 201 (c) provides that, for the purposes of the Act, "electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any

point outside thereof; but only insofar as such transmission takes place within the United States".

The essential basis of the Commission's regulatory authority under Section 301 (a) of the Act is, therefore, ownership or operation of "facilities" for transmission of electric energy which is "transmitted" from one State and consumed at an outside point, or for sale of such energy at wholesale (i. e., for resale) in interstate commerce. Congress, however, nowhere in the Act defined "transmission" or "facilities." Hence, the task of applying these terms to particular factual situations must necessarily have been "assigned primarily to the agency created by Congress to administer the Act"—here the Federal Power Commission. See *National Labor Relations Board* v. *Hearst Publications,* 322 U. S. 111, 130–131. As this Court ruled in that case, "where the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function is limited" to ascertaining whether the agency's determination "has 'warrant in the record' and a reasonable basis in law." (322 U. S. at 131.)

The Commission adopted the view that transmission in interstate commerce "extends from the generator, where generation is complete (*Utah Power & Light Co.* v. *Pfost,* 286

U. S. 165, 181), to the point where the function of conveyance in bulk over a distance, which is the essential characteristic of 'transmission,' is completed and the process of subdividing the energy to serve ultimate consumers which is the characteristic of 'local distribution,' is begun (*Southern Gas Corp.* v. *Alabama,* 301 U. S. 148, 155; *East Ohio Gas Co.* v. *Tax Commission,* 283 U. S. 465, 471)." (R. I, 75). After pointing out that this distinction between "transmission" and "local distribution" accords with the use of these terms in the functional engineering sense, the Commission concluded that the term "facilities" for such transmission includes equipment which facilitates the conveying of energy in bulk over a distance (R. I, 77). The Commission, by applying these tests, found that certain equipment which petitioner owns and operates in the Bristol district constituted "facilities for the transmission of electric energy in interstate commerce" (R. I, 69, 75–76); that certain other equipment which petitioner owned and operated in the East Hampton and Winsted districts were such "facilities" until disconnected from the interstate power line in June 1939 and June 1941, respectively (R. I, 67–68); and that until February 1941, petitioner's equipment for supplying power to Groton were facilities for both the transmission of electric energy in interstate commerce and the sale of electric energy at wholesale in interstate commerce (R. I, 64–65).

Under Point I we shall urge that petitioner's ownership and operation of the Bristol substation is sufficient to support the Commission's conclusion that petitioner is a "public utility" under the Act. Under Point II we shall undertake to show that even if petitioner can no longer be regarded as a "public utility" within the meaning of the Act, it was proper, nevertheless, for the Commission to find that petitioner was a "public utility" while the Commission's accounting orders were in effect, and to order that petitioner comply with such orders for the period in which it was subject to the Commission's jurisdiction.

I

PETITIONER IS A "PUBLIC UTILITY" WITHIN THE MEANING OF THE FEDERAL POWER ACT.

There is no dispute as to the basic facts found by the Commission. However, petitioner challenges (Br. 50–52) the Commission's findings that "electric energy generated in Massachusetts was supplied" to petitioner's Bristol facilities "regularly, frequently, for substantial periods of time, and in substantial amounts" (R. I, 66, 68, 69, 79–81), and that the designated facilities at petitioner's Bristol substation are "facilities for the transmission of electric energy in interstate commerce", as distinguished from "facilities used in local distribution", and hence are subject to the

jurisdiction of the Commission (R. I, 69). We submit that these findings have warrant in the record and a reasonable basis in law, and were properly sustained by the court below. *Jersey Central Power and Light Company* v. *Federal Power Commission,* 319 U. S. 61, 67; *National Labor Relations Board* v. *Hearst Publications,* 322 U. S. 111, 130–131; *Gray* v. *Powell,* 314 U. S. 402; *Sunshine Coal Company* v. *Adkins,* 310 U. S. 381, 390, 400; *Rochester Telephone Corp.* v. *United States,* 307 U. S. 125, 145–146; *National Labor Relations Board* v. *Jones & Laughlin,* 301 U. S. 1; *United States* v. *Louisville & Nashville R. R. Co.,* 235 U. S. 314, 320.

A. THE EVIDENTIARY BASIS OF THE FINDING

Petitioner no longer challenges (Br. 14, 50–51) the substantiality of the evidence supporting the Commission's finding that Massachusetts energy flowed regularly, frequently, for substantial periods, and in substantial amounts, over its facilities in the Bristol district (R. I, 66, 68, 69, 79–81). Relying upon *Crowell* v. *Benson,* 285 U. S. 22, petitioner contends, however, that this is a finding as to a "jurisdictional fact" which must be supported by the weight of the evidence. This contention is without merit. As the cases cited in the preceding paragraph establish, the Commission's finding will not be set aside if supported by substantial evidence; and it is not disputed

that the finding rests upon such evidence.[21] See Section 313 (b) of the Federal Power Act, which provides that the Commission's findings of fact shall be conclusive if supported by substantial evidence (Appendix A, pp. 56–66, *infra*).

Petitioner's principal contention is that, regardless of whether Massachusetts energy moved

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[21] Properly qualified staff engineers for the Commission (R. II, 474–479, 388–389, 560, Tr. 1711) after tracing the energy flow from recorded meter readings by methods similar to those employed in *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U. S. 61, 65–67, testified that in their expert opinion substantial amounts of electric energy generated in Massachusetts and flowing over the Hartford-Agawam line entered the South Meadow substation, and were supplied over the C. P. 1 and C. P. 2 lines to petitioner's facilities at its East Hampton, Bristol, and Winsted districts (R. II, 388–474, 584–590, 474–543; R. III, 710–712; Exs. 61, 62). A study which did not purport to be exhaustive showed that there were 601 days between January 1, 1937 and May 26, 1941 (321 plus 280, R. II, 584, 442–443, 499, Ex. 62), during which electric energy from Massachusetts carried or helped carry the Bristol load continuously for one or more hours (R. II, 454–456, 584, 546, 549, 459). There was one instance of Massachusetts energy being supplied to all points on the C. P. 1 and C. P. 2 interstate trunk line for 45 hours consecutively, during 39 of which all loads on the line were carried by Massachusetts generators, and no Connecticut energy whatever was metered (R. II, 465–467). For two or more consecutive hours on 8 of the 21 days selected for illustrative purposes, Massachusetts energy alone supplied all loads between Hartford and Falls Village on the C. P. 1 and C. P. 2 lines (R. II, 410–412, 428–429, Ex. 61; R. II, 454–455). The testimony of petitioner's experts did not attempt to show that Massachusetts energy actually did not reach petitioner's facilities, but merely that such a flow could not be proved with absolute scientific conclusiveness (R. III, 773–774, 776, 783, 804–817).

over petitioner's facilities at Bristol, the Commission was not warranted in finding that they were "facilities for the transmission of electric energy in interstate commerce" within the meaning of the Act. We submit, however, that there was ample basis in the record to support the Commission's finding (R. I, 69) that the designated facilities at the Bristol substation performed a "transmission" function and were not used in local distribution.[22] Commission Engineer Thomas, an electrical engineering expert (R. II, 474–479), explained "transmission" and "distribution" in their functional sense,[23] and testified that, on the basis of the function served,

[22] A Commission engineering expert testified that the distinction between the terms "transmission" and "local distribution" may vary, dependir. upon the purpose for which the terms are used or defined. Electric utility operating personnel may be designated as "transmission" or "distribution" according to certain predominant characteristics of their work. Utility accounting may reflect itemization into major categories called "transmission" and "distribution," determined by considerations of accounting principles and necessities. In view of these variations, the expert differentiated transmission facilities from local distribution facilities upon the basis of the functions which an analysis of their operations showed they served. (R. II, 499–500.)

[23] Thomas explained these terms as follows (R. II, 499–500):

"The transmission of energy in a utility system is the conveying of energy in bulk from a point at which it is available to a point at which it is needed. Its significance is transportation or conveyance.

"Distribution of energy in a utility system is a subdividing of the bulk energy delivered to a neighborhood among the

the Bristol facilities designated in the Commission's finding (including the outdoor step-down substation and the synchronous condenser) were "facilities for transmission" (R. II, 492–493, 499–500, 519–521, 528–529).

The Bristol facilities which the Commission found to be used for transmission are those facilities which it was necessary to install and use because the electric energy distributed and sold in Bristol was supplied from a distance instead of from nearby. (R. I, 75–77.) If transmission lines without transformers were used to bring energy from a distant source, it would be necessary to use such large copper conductors or suffer such high losses of energy in the line as to render the attempt uneconomical. (R. III, 997.) Such difficulty is avoided and economical long-distance transmission of power made possible by the use of high voltages, the corresponding reduction in current making possible the employment of relatively small conductors. But it is not commer-

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various consumers. Local distribution narrows the operation down to a group of consumers so closely associated as to use common distribution facilities without the necessity of considering the element of transmission between members of the group.

"Transmission facilities are characterized by the search for low energy losses and economy of structural costs; local distribution by the convenience of customers and of the public and the general necessity of accommodation to many structural limitations due to the use of public rights of way, private yards, esthetic considerations, and so forth."

cially feasible to generate electric energy at the required high voltages, and customer utilization at such voltages would be out of question. If long distance transmission is to be accomplished by the use of high voltage, therefore, it is necessary to employ apparatus (step-up transformers and substation facilities) to raise the voltage at the supply end and corresponding apparatus (step-down transformers and substation facilities) to lower the voltage at the receiving end. Petitioner's own experts corroborated the testimony of Commission engineers that such apparatus, as well as the connecting line of conductors, are necessarily used where electric energy in bulk is commercially conveyed over a distance too great for economical conveyance at generator voltage. (R. III. 997, 918–919; cf R. II, 493, 501–532). See A. E. Knowlton, *Standard Handbook for Electrical Engineers* (7th ed. 1941), p. 1156.

At Bristol there is another piece of electrical machinery which the Commission found to be a transmission facility: a synchronous condenser (R. III, 891, Ex. 82 [Tr. 3677]) which is like a generator in general appearance. The function of such a condenser, as explained by expert witnesses before the Commission (R. II, 519–520, 528–529; R. III, 891–895, 910–911, 1002, 1003; R. I, 228–230), may be summarized as follows:

A synchronous condenser prevents fluctuations in voltage, increases capacity in time of need, re-

duces line losses and facilitates long-distance transmission. Being a motor or generator electrically connected to the circuit but mechanically revolving freely, it takes the out-of-phase energy from the circuit, whether leading or lagging, stores it for the brief interval of a fraction of a cycle, and then returns it to the circuit. By eliminating the lagging or leading current from the circuit, it obviates the fluctuation in the voltage at the load end of the transmission line, and by eliminating the lagging current it increases the capacity of the facilities under heavy load all the way back through the generator and reduces line losses, thereby improving transmission line operation and making long-distance transmission a more satisfactory and more economic method of supplying electric energy to a load.[24]

These are the immediate results of synchronous condenser operation, and the effect on local distribution voltage is merely a product of these immediate results. Synchronous condensers are therefore as clearly transmission facilities as the lines

[24] For this reason, companies like The Connecticut Power Company selling electric energy from transmission lines, put clauses in their contracts requiring the maintenance of a prescribed power factor, i. e., fixing a limit to the lagging current. For example, see Ex. 43 (R. III, 1098); Ex. 8 (R. III, 1040).

themselves or any other appurtenant apparatus contributing to their economy and operation.[25]

B. THE FINDING HAS A REASONABLE BASIS IN LAW

In determining the meaning of "facilities" for the "transmission of electric energy in interstate commerce"—the test of the Commission's jurisdiction under the Act—the Commission (R. I, 75) referred to two decisions of this Court, *Utah Power & Light Co.* v. *Pfost,* 286 U. S. 165, and *East Ohio Gas Co.* v. *Tax Commission,* 283 U. S. 465. The *Pfost* case was cited in fixing the beginning of transmission in interstate commerce—i. e., where generation of the energy is complete (286 U. S. at 181), while the *East Ohio* case, *inter alia,* was invoked in defining approximately where such transmission ends—i. e., where the function of conveyance in bulk over a distance is completed

[25] Because synchronous condensers structurally are motors or generators, it is feasible to design them for the usual generator voltages but not for transmission line voltages; hence, they are connected on the low tension side of the transmission substation step-down transformers (as at Bristol, Ex. 26), and not directly to the transmission line. The point of connection, however, in no way affects their essential function. The following standard treatises and handbooks discuss the functions of the synchronous condenser: Lovell, *Generating Stations* (2d Ed. 1935), pp. 416–421; Marks, *Mechanical Engineers Handbook* (1st Ed. 1916), p. 1632; Knowlton, *Standard Handbook for Electrical Engineers* (7th Ed. 1941), pp. 635, 753, 754, 1048, 1156, 1185, 1327, 1712; Rushmore and Lof, *Hydro-Electric Power Stations* (2d Ed. 1923), p. 371; Bryant and Johnson, *Alternating Current Machinery* (1st Ed. 1935), p. 358.

and the process of subdividing the energy for local consumers is begun (283 U. S. at 471; *Southern Gas Corp.* v. *Alabama*, 301 U. S.148, 155).[26]

This distinction between "local distribution" and "interstate transmission", derived from judicial determinations of the highest authority, was found by the Commission to be in accord with the use of these terms in a functional engineering sense (R. I, 76). The Commission then relied upon expert engineering opinion to fix the precise boundary between the two functions in the particular case before it. While the *East Ohio* case recognized "interstate transmission" and "local distribution" to be mutually exclusive functions, it did not (nor does any other decision of this Court) establish a fixed point in an interstate electric circuit at which "interstate transmission" ended and "local distribution" began.[27] The judg-

[26] Since both the Commission and the court below relied, not upon the connections between petitioner's facilities and the C. P. 1 and C. P. 2 lines, but upon the movement of out-of-state energy over petitioner's facilities, there is obviously no validity to the asserted conflict (Pet. Br. 15) between the decision of the court below and the statement in *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U. S. 61, 72, that "mere connection determines nothing."

[27] Contrary to petitioner's contention (Br. 34), no decision of this Court purported to decide at what precise point interstate commerce ended and local distribution began. *Public Utilities Commission* v. *Landon*, 249 U. S. 236, merely held that retail rates for natural gas sold to local consumers was subject to state regulation as a matter of intrastate commerce, and that the rates so regulated could not be challenged as confiscatory by receivers for the company supplying the

ment of engineering experts who testified before the Commission was that equipment such as that maintained by petitioner at Bristol, designed and used as one of the two necessary terminals of a power transmission system for the conveyance of high-voltage energy in large quantities, constituted "facilities for transmission" and not for "local distribution."

The *Pfost* and *East Ohio* cases are sound guides to the meaning of "transmission of electric energy in interstate commerce", since both cases were the prevailing judicial precedents at the time the Act was adopted and were frequently noted during the debates and hearings on the Act.[28] Moreover, the term "transmission", whether read in the technical sense described by the Commis-

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out-of-state gas to the local distributors. In *Missouri* v. *Kansas Gas Co.*, 265 U. S. 298, this Court held that the business of piping natural gas from one state to another and selling it at wholesale to local distributors is interstate commerce and that the rates for such sales could not properly be regulated by the states. While these cases recognize that natural gas is in intrastate commerce, after it is in the local supply mains running to the consumers' premises, the cases neither had to decide, nor purported to decide, where the "boundary" was between interstate commerce and local distribution.

[28] References to *East Ohio* case: Hearings, House Committee on Interstate and Foreign Commerce, on H. R. 5423 (74th Cong., 1st Sess.), pp. 614, 666, 668, 675, 1340, 1635, 1679, 1695–96; Hearings, Senate Committee on Interstate Commerce, on S. 1725 (74th Cong., 1st Sess.), pp. 342, 761–62, 786–87, 1020; 79 Cong. Rec. 8628; 79 Cong. Rec. 10385–86.

References to *Pfost* case: S. Rep. No. 621 (74th Cong., 1st Sess.), pp. 48–49; 79 Cong. Rec. 10384–87.

sion's experts or in its familiar sense of the conveyance of energy, accurately describes the function performed by the designated facilities of petitioner at Bristol. The long distance bulk energy movement does not end until after the energy passes through the step-down transformers on to the low tension busses in the substation; hence, only at those busses could local distribution properly be said to begin.

This construction of the Act is in harmony with the decision of this Court in *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U. S. 61. There a line 7/8 of a mile long, located wholly within one state but carrying energy which reached a second state through facilities of an intervening company, was held by this Court to be subject to the Act. While those facilities were located near the "sending end" of an integrated and instantaneous process of transmission from one state to another, no reason exists for treating differently transmission facilities at the receiving end of such a system. This is more clearly apparent from *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, 314 U. S. 498 (cited in the *Jersey Central* opinion), where this Court recognized that transportation of natural gas, through a wholesale distributor's facilities located wholly within the receiving state, was in interstate commerce even after the gas was received at a reduced pressure from the inter-

state lines of the seller. Here petitioner takes the electric energy at its interstate transmission voltage (66,000 volts), and it is thereafter reduced.

Petitioner contends that "the Act was not intended to regulate a local distributing company"; that it is engaged only in the business of retail distribution at Bristol; and that it is, therefore, exempt from the Commission's jurisdiction (Br. 23–32). This contention has effectively been answered by *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U. S. 61, where this Court ruled that it is not the kind of business in which a company is engaged that is "determinative of its inclusion in this act;" the "determinative fact is the ownership of facilities used in transmission." (319 U. S. at 73). The record shows that the step-down substation at Bristol includes facilities that a transmission or generating company would ordinarily use for transmitting energy to a retail distributor. The fact that such facilities happen to be owned in this case by the retail distributor, contrary to the usual practice, does not alter the character of the facilities and cannot affect their inclusion within the Commission's jurisdiction under the Act.[29]

[29] There is nothing in the record to support the statement of the National Association of Railroad and Utilities Commissioners (Br. in support of Pet. for Cert., 23) that local distributing companies must own step-down substation facilities such as those at Bristol in order to engage in the business of local distribution. Indeed, it is unusual for local distributing companies to own the step-down substations, such

Indeed, the Act expressly recognizes that local distributing companies may own facilities subject to the Commission's jurisdiction, even though the Commission may have no authority over any of the company's rates. Thus, Section 206 (b) provides that "The Commission upon its own motion, or upon the request of any State commission * * * may investigate and determine the cost of * * * transmission of electric energy by means of facilities under the jurisdiction of the Commission in cases where the Commission has no authority to establish a rate governing the sale of such energy." Since the only sale of out-of-state energy for which the Commission "has no authority to establish a rate" is the sale to ultimate consumers, normally made by a retail distributor, the Act must here be referring to transmission facilities owned by a local distributing company.

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facilities ordinarily being maintained and operated by the company having the necessary facilities and personnel for high-tension operation and maintenance. Although petitioner has asserted that a "survey made by the Edison Electric Institute" shows there are "over 1,000 small companies which buy energy from larger systems, the supply of almost all of which may have some component from an interstate source" (Pet. for Cert., p. 14), an informal survey by the Federal Power Commission shows that out of the total of approximately 1,000 privately-owned electric utilities there are only twelve which own or operate step-down substation facilities for taking out-of-state energy, and which otherwise would not be public utilities under the Act. Clearly, by the order under review the Commission neither purports nor intends to assume jurisdiction under Section 201 (b) over the facilities of all local distributing companies.

This view is confirmed by the statement of the House Committee that Section 206 (b) "reaches those situations where electric *energy is transmitted* in interstate commerce *by the same company which distributes it locally,* and will greatly aid State commissions in fixing reasonable rates in such cases." [Italics supplied.] H. Rep. No. 1318, 74th Cong., 1st Sess., p. 29). It is further reinforced by the fact that Congress rejected the proposal of the Solicitor of the National Association of Railroad and Utilities Commissioners that companies purchasing interstate energy solely for local distribution be specifically exempted from the Act. Hearings, House Committee on Interstate and Foreign Commerce, on H. R. 5423 (74th Cong., 1st Sess.), p. 1661; Hearings, Senate Committee on Interstate Commerce, on S. 1725 (74th Cong., 1st Sess.), p. 748. There is no justification for petitioner's attempt to write such an exemption into the Act by judicial construction.

Petitioner places considerable reliance (Br. 38 *et seq.*) upon the so-called "but clause" in Section 201 (b) of the Act:

> The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy [in interstate commerce], but shall not have jurisdiction, except as specifically provided in this Part and the Part next following, over facilities

> used for the generation of electric energy or over facilities used in local distribution or only for transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.

Petitioner argues that the "but clause" is designed to reduce the earlier grant of authority over "all facilities." Analysis of the statute and its legislative history reveals, however, that the "but clause" was inserted out of an abundance of legislative caution in order to emphasize that while ownership or operation of the facalities described therein does not make a person a "public utility" under the Act, the Commission's regulatory authority specifically granted in other sections of the Act extends to facilities named in the "but clause" when owned by a "public utility." The "but clause" and the preceding grant of jurisdiction over "all facilities" for interstate transmission, when read together, are complementary and do not create overlapping categories. The "but clause" clarifies but does not limit the scope of the preceding "all facilities" clause.

When the Act was adopted, each of the four functions enumerated in the "but clause" was considered under prevailing judicial authority to be separate and clearly distinguishable from "trans-

mission in interstate commerce." Thus, "generation" had been distinguished from interstate transmission (*Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165, 181); "local distribution" from interstate transmission (*East Ohio Gas Co.* v. *Tax Commission*, 283 U. S. 465, 470–472);[30] and transmission for consumption by the transmitter itself from the ordinary scope of interstate commerce (*The Pipe Line Cases*, 234 U. S. 548, 562).[31] And, of course, transmission which is only intrastate is *ex hypothesi* not interstate transmission. Other portions of the legislative history confirm the inference that the functions described in the "but clause" were understood to be separate from interstate transmission.[32] The proper interpretation of the "but clause" is, therefore, that it refers to functions other than transmission in

[30] See p. 25, n. 29, *supra*.

[31] Cf. *Pennsylvania Railroad Co.* v. *Pittsburgh L. & W. R. Co.*, 83 F. (2d) 861, 865 (C. C. A. 6), certiorari denied, 299 U. S. 572; *Superior Oil Co.* v. *Mississippi*, 280 U. S. 390, 395; *Dept. of Treasury of Indiana* v. *Wood Preserving Corp.*, 313 U. S. 62.

[32] Thus, a proposed amendment to Section 201 (c)—then numbered 201 (b)—was submitted by the Solicitor of the National Association of Railroad and Utilities Commissioners, in the form of a proviso that—

> "* * * after electric energy has been transmitted into one State from another State, or from a foreign country, if the voltage is reduced for the purpose of enabling the same to be distributed to local consumers; or if such electric energy is in any manner so distributed,

interstate commerce (see *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U. S. 68, 72), and that the affirmative grant of authority in Section 201 (b) over "all facilities" for the "transmission of electric energy in interstate commerce" is the complete measure of the facilities ownership or operation of which renders a person a "public utility" within the meaning of the Act. *Hartford Electric Light Co.* v. *Federal Power Commission*, 131 F. (2d) 953, 961–962 (C. C. A. 2), certiorari denied, 319 U. S. 741.[35]

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any transmission for the purpose, or in the course of such distribution, shall be deemed to be in intrastate commerce or in local distribution not subject to the jurisdiction of the Commission." Hearings, House Committee on Interstate and Foreign Commerce, on H. R. 5423 (74th Cong., 1st Sess.), p. 1661; Hearings, Senate Committee on Interstate Commerce, on S. 1725 (74th Cong., 1st Sess.), pp. 748–49.

Although not adopted, the proposal indicates that "local distribution" was understood to come after interstate "transmission" and to be separate therefrom.

Similarly, production was treated as distinct from interstate transmission, for it was included along with "transmission in interstate commerce," in the affirmative grant of jurisdiction in Section 201 (b), until deleted from that grant by the House.

[35] The choice of the words "used *in*" local distribution when contrasted with the words "used *for*," generation, intrastate transmission, and transmission for consumption by the transmitter suggests that both Houses of Congress employed the words "used *in*" when referring to local distribution (rather than "used *for*") to make clear the intention not to include in the "but clause," facilities employed for the purpose of supplying energy to be locally distributed, but not actually used in distributing the energy locally.

Moreover, facilities devoted to any of the functions named in the "but clause" fall within its exemption only if they are devoted exclusively to such function. If facilities serve a dual function—e. g., both interstate and intrastate transmission, or interstate transmission and local distribution—they cannot be covered by the "but clause." The clause refers to "facilities used * * * only for the transmission of electric energy in intrastate commerce;" if there is an admixture of intrastate with interstate transmission over the same facilities, such facilities are not used only for intrastate transmission, and are within the Commission's jurisdiction over "all facilities" for interstate transmission. *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U. S. 61.[34] While the term

[34] It is argued by the State of Connecticut that petitioner's Bristol facilities are used "only for the transmission of electric energy in intrastate commerce" and thus excluded by Section 201 (b) from the jurisdiction of the Commission. (Br. in support of Pet. for Cert., 28-29.) But this argument ignores Section 201 (c) of the Act which states that "electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof." Transmission not embraced within this definition—"intrastate transmission"—must therefore be distinguished from "interstate transmission" as not involving electric energy "transmitted from a State and consumed outside thereof." Since the Bristol facilities take out-of-state energy, they clearly cannot be intrastate transmission facilities within the meaning of the Act. Moreover, contrary to the contention of the State of Connecticut, failure to hold petitioner's Bristol facilities to be used "only for transmission of electric energy in intrastate commerce" will not mean

"only" is not used in connection with local distribution, the legislative history shows that the phrase "facilities used in local distribution" was intended to cover only those facilities which are used exclusively in local distribution. As it appeared in the bill passed by the Senate (S. 2796, S. Rep. No. 621, 74th Cong., 1st Sess.), the "but clause" was expressed as an exception to the preceding affirmative grant (which at that stage included jurisdiction over production of energy for interstate commerce)—"except facilities used *only* for the production or transmission of electric energy in intrastate commerce or in local distribution or for the use of the producer or transmitter." [Italics supplied.] The choice of the word "only" clearly showed that local distribution facilities were excepted only if used exclusively in local distribution. This purpose was confirmed by the Senate Committee Report, which stated that "all of the facilities, other than those used *solely* for retail distribution, are made subject to the jurisdiction of the Commission." [Italics supplied.] (S. Rep. No. 621, 74th Cong., 1st Sess., p. 48.) And no change in this respect was intended by the House, for the House report stated that "*As in the Senate bill* no jurisdiction

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that the Commission will then have jurisdiction over all petitioner's facilities up to the consumers' appliances, for the Commission admits that ownership of facilities used only *in* local distribution of out-of-state energy furnish no basis for its jurisdiction under Section 201 (b) of the Act.

is given over local distribution of electric energy, and the authority of States to fix local rates is not disturbed even in those cases where the energy is brought in from another State." [Italics supplied.] (H. Rep. No. 1318, 74th Cong., 1st Sess., p. 27.) Although the bill underwent changes in conference, and the term "only" emerged as a qualification upon intrastate transmission, there is no indication of an intention to depart from the purpose expressed by both the House and the Senate Committees.[35]

[35] The form of the "but clause" is readily explained by the evolution of Section 201 (b) of the Act. In the original bills (H. R. 5423 and its companion bill S. 1725, 74th Cong., 1st Sess.), as well as in the bill reported by the Senate (S. 2796, 74th Cong., 1st Sess.), the affirmative grant of jurisdiction included not only all facilities for interstate transmission and sale at wholesale, and all facilities for production of energy for such transmission and sale, but also "all facilities connected therewith as parts of a system of power transmission situated in more than one State." Since the provision for all connected facilities would obviously cover intrastate transmission and local distribution facilities physically connected with an interstate system, the "except clause" which followed the affirmative grant clearly operated as an exception, reducing the scope of the preceding affirmative grant. However, when the Senate bill was amended and reported by the House, the affirmative grant no longer included production facilities or connected facilities, the "except clause" had been transformed into a "but clause," and in order to stress the elimination of production facilities, the House had added to the "but clause," facilities used for "generation." At this stage, the "but clause" no longer had a carving out function.

The "but" phraseology, when first introduced in the bill, was not considered as an excepting or curtailing clause. Thus, when Dozier A. DeVane, Solicitor for the Federal

The phrase "except as specifically provided in this Part and the Part next following" was inserted in the clause by the Conference Committee "to remove any doubt as to the Commission's jurisdiction (over facilities used for the generation and local distribution) of electric energy to the extent provided in other sections" of Parts II and III of the Act. H. Rep. No. 1903 (74th Cong., 1st Sess.), p. 74. In this aspect, the "but clause" confirms the Commission's authority, to the extent "specifically provided" in other sections of the Act, over facilities "used in local distribution," etc., when such facilities are owned by a "public utility." *Hartford Electric Light Co.* v. *Federal Power Commission*, 131 F. (2d) 953, 961–962 (C. C. A. 2), certiorari denied, 319 U. S. 741."

Petitioner also argues that the Commission is seeking to invade the area reserved for state

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Power Commission, and one of the original draftsmen of the bill (Hearings, Senate Committee on Interstate Commerce, on S. 1725 (74th Cong., 1st Sess.), p. 223), explained the reason for inserting into the first sentence of Section 201 (b)—then numbered Section 201 (a)—the clause "but shall not apply to the retail sale of electric energy in local distribution," he stated that it was not intended to change the policy otherwise set forth in the bill, but merely to make the policy clear. Hearings, House Committee on Interstate and Foreign Commerce, on H. R. 5423 (74th Cong., 1st Sess.), pp. 497, 523.

[36] The Act vests such authority in the Commission in respect of the issuance of securities (Sec. 204 (a)); the investigation of costs and depreciation (Sec. 208); the keeping of records and accounts (Sec. 301 (a)).

regulation, and in effect urges that the purpose of the Act is limited to wholesale rate regulation in order to supplement state regulation of retail rates (Br. 23–27). But the Act itself refutes any notion that it is devoted solely to rate regulation. Thus, it seeks to promote the interconnection and coordination of facilities (Sec. 202); it requires Commission approval for the disposal, merger, or consolidation of facilities or for the acquisition of securities of any other public utility (Sec. 203); it conditions the issuance of securities upon Commission authority (Sec. 204); it provides for the maintenance of adequate interstate service (Sec. 207); and it authorizes the regulation of accounting practices (Sec. 301).

That these were all considered independent subjects of regulation appears from the Senate Report on the bill (S. Rep. No. 621, 74th Cong., 1st Sess., p. 18), which treats the regulation of wholesale rates as simply one element of the proposed legislation.[37] Referring to Section 203 (a) providing for Commission control over the disposal, merger or consolidation of facilities, the Committee characterized this section as furnishing "an

[37] "Part 2 places the utilities under the regulated conditions which have been prescribed for the principal other national utilities. Commission approval is required before they may issue new securities or consolidate or transfer their operating properties. The Commission is authorized to prescribe the form in which their accounts are to be kept. The sale price of energy sold at wholesale in interstate commerce is made subject to Commission determination."

essential check upon the development of the industry along uneconomic lines" and as complementing "title I of the bill by directing the Commission to prevent transfers or consolidation of property which would impair the ability of public utilities to render adequate service or impede, or tend to impede, the coordination in the public interest of facilities subject to the jurisdiction of the Commission." *Id.*, p. 50. Again, in explaining the Commission's control over the acquisition of securities of other public utilities, the Senate Report stated that "in this way the Commission would have authority to keep the same kind of check upon the creation of spheres of influence among operating companies that the Securities and Exchange Commission has over holding companies under title I." (*Ibid.*) Cf. *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U. S. 61, 75–76.

Petitioner points (Br. 46–47) to an alleged inconsistency between the position taken here and the Note in its Uniform System of Accounts, which states that "Stations which change the energy from transmission to distribution voltage shall be classified as distribution stations." The accounting instruction preceding this Note clearly states that it is for the "purpose of this system of accounts," and the instruction includes a statement that the facilities described therein are to be classified as part of the distribution system "whether or not" they "are operated as part of a

transmission system or as part of a distribution system." Federal Power Commission, Uniform System of Accounts Prescribed for Public Utilities and Licensees, Revised to December 31, 1936, p. 52 (see Appendix B, pp. 68–69, *infra*). Indeed, petitioner's own system maps as of March 1, 1938, and December 1, 1938, classify its Bristol substation as a "Transmission Substation" while other of its substations are listed on the same maps as "Distribution Substations." (Exs. 68 and 69; but cf. Ex. 70).[38]

II. REGARDLESS OF PETITIONER'S PRESENT STATUS, IT WAS A "PUBLIC UTILITY" WHILE THE COMMISSION'S ACCOUNTING ORDERS WERE IN EFFECT, AND IT REMAINS UNDER A DUTY TO COMPLY WITH SUCH ORDERS FOR THE PERIOD IN WHICH IT WAS SUBJECT TO THE COMMISSION'S JURISDICTION

Apart from the Bristol facilities, we submit that the Commission properly found that petitioner was a "public utility" until June 1941, on account of its ownership and operation of certain facilities at East Hampton, Winsted, and Groton. The Commission's accounting orders were

[38] The State of Connecticut argues (Br. in Support of Pet. for Cert. 30–31) that the Commission's construction would interfere with the power of the State to regulate local distributing companies, since the petitioner would be required to comply with both Federal and State accounting requirements which it is said might be conflicting as to specific items in the accounts. This Court in *Northwestern Electric Co.* v. *Federal Power Commission*, 321 U. S. 119, rejected an identical argument.

outstanding and performance thereunder was due before June 1941." Since the Commission in the case at bar has directed compliance "as of the effective dates of such orders" (R. I, 33), we submit that the order is valid insofar as it requires petitioner to comply with these orders for the period in which it was a "public utility."

A. Termination of petitioner's status as a "public utility" could not cancel the obligation to comply with the Commission's accounting orders for the period in which petitioner was a "public utility"

If petitioner was a "public utility" while the Commission's accounting orders were outstanding, petitioner's duty to comply therewith for the period in which it was a "public utility" was not discharged by its subsequent change in status. Admittedly, the Act does not require a company to continue the ownership or operation of the facilities which make it a "public utility." *Re Twin State Gas & Electric Co.*, 33 P. U. R. (NS) 39." But it does not follow, and the Commission

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"Order No. 43 prescribing the Uniform System of Accounts was issued on June 10, 1936, and became effective January 1, 1937 (R. I, 35-36). A supplemental order with respect to Electric Plant Accounts Instruction 2-D of the Uniform System of Accounts was issued on May 11, 1937 (R. I, 40-43). The reclassification of accounts in accordance with the foregoing orders was required to be completed by January 1, 1939.

"In the *Twin State* case, the Commission approved the sale of certain transmission facilities by a "public utility" even though the sale might have been "a step in the direction that eventually results in the vendor company obtaining a status other than that of a 'public utility' * * *."

has never held, that a company whose status has so changed is entitled to disregard obligations which accrued for the period in which it was a "public utility." Public rights are here involved, and the company, by its own voluntary acts, can neither foreclose "nor prevent the assertion thereof by the Government as a substantial trustee for the public." Cf. *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 309–310; *Federal Trade Commission* v. *Goodyear Tire & Rubber Company*, 304 U. S. 257, 260; *Oklahoma-Texas Trust* v. *Securities and Exchange Commission*, 100 F. (2d) 888, 892–893 (C. C. A. 10); *United States* v. *Bates Valve Bag Corporation*, 39 F. (2d) 162, 164–165 (D. Del.); *National Labor Relations Board* v. *Cleveland-Cliffs Iron Co.*, 133 F. (2d) 295 (C. C. A. 6).

Nor would the imposition of such obligations upon petitioner for the period in question result in "a mere waste of time," or be of "no practical benefit," as petitioner charges (Br. 61). As has already been noted (p. 7, note 14, *supra*), proponents of the Act, by way of illustrating the accounting abuses sought to be remedied thereby, specifically cited during the debates in the House alleged write-ups aggregating $21,000,000 in the accounts of petitioner and two companies (Northern Connecticut Power Company and Connecticut Electric Service Company) since merged into petitioner.[a] 79 Cong. Rec. 10421–10424. Cer-

[a] Moody's *Public Utilities*, 1942, p. 1151; *Id.* 1934, p. 2549.

tainly consumers and investors in petitioner's securities have a continuing interest in the determination and elimination of any inflation in petitioner's accounts. *Northwestern Electric Co.* v. *Federal Power Commission*, 321 U. S. 119. The Federal Trade Commission's extensive investigation of public utilities revealed numerous abuses in the public utility industry, including financial manipulation and exploitation, whereby the fixed assets of public utilities were written up or inflated, through one device or another, by approximately one and one-half billion dollars, such inflation being evidenced for the most part by the issuance of "watered" stock and the creation of fictitious surpluses (Sen. Doc. 92, Part 72–A, pp. 235–275, 282–293, 298–304; Part 73–A, pp. 1, 13–14, 28, 62–64, 109, 139; 79 Cong. Rec. 8384).

At the hearings on the Federal Power Act, witnesses, including representatives of the utility industry, emphasized the importance of uniform and sound accounting regulation as an aid to the elimination of past abuses and the prevention of their recurrence (Hearings, House Committee on Interstate and Foreign Commerce, on H. R. 5423 (74th Cong., 1st Sess.), pp. 345, 807–809, 1106–1107, 1307–1308, 1920). There was testimony that sound accounting alone was sufficient to cure the abuses (*id.*, pp. 919, 1343), and the report of the Senate Committee on Interstate Commerce stated

categorically that "The authority of the Commission over the accounts of companies under its jurisdiction extends to the entire business of such companies." (S. Rep. No. 621, 74th Cong., 1st Sess., p. 53.)" Clearly, Congress contemplated full application of the accounting powers conferred."

The fact that the Commission itself does not have authority to regulate petitioner's retail rates,

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"See also H. Rep. No. 1318 (74th Cong., 1st Sess.), pp. 30–31.

"An attempt was made to limit the federal accounting authority conferred by the Act by providing that "If, with respect to * * * the method of keeping accounts, * * * any person is subject to the law of any State or regulation by a State commission, such person shall not be subject to the requirements [of the Act] with respect to the same subject matter." Although it was adopted in the House (79 Cong. Rec. 10574–10575), the Conference Committee eliminated it (H. Rep. No. 1903, 74th Cong., 1st Sess., pp. 63, 75). Representative Lea, a member of the House Committee on Interstate and Foreign Commerce which reported the bill, objected to the amendment on the ground that it "would largely destroy the usefulness of the Federal regulation this bill gives to the Federal Power Commission. We cannot have effective regulation unless we give that Commission the power to get information and give it control over accounts and valuations. The amendment * * * would destroy effective control over the accounts * * * of these utility companies. It would compel the Federal Government to accept State valuations, made in some instances without adequate information and sometimes in total disregard of the rights of the people of other States whose interests, rates, investors, and consumers are involved. * * *" (79 Cong. Rec. 10574–10575).

or its issuance of securities," does not detract from the value of the accounting information here sought. The very requirement that such information be filed in itself tends to discourage further write-ups and inflation of accounts, and the publication of the information would amount to "regulation by the informatory process" which this Court has upheld, irrespective of the existence or exercise of other regulatory power which might be aided by the information so published. *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419, 435–439; *Valvoline Oil Co.* v. *United States*, 308 U. S. 141, 146; cf. II Sharfman, *The Interstate Commerce Commission*, pp. 96–100; see Hearings, Senate Committee on Interstate Commerce, on S. 1725 (74th Cong., 1st Sess.) p. 276; Hearings, House Committee on Interstate and Foreign Commerce, on H. R. 5423 (74th Cong., 1st Sess.) pp. 284, 366, 553.[*] Compare Sec. 307 (a), which authorizes

[*] Section 204 (f) states that the Commission's regulatory power over security issues "shall not extend to a public utility organized and operating in a State under the laws of which its security issues are regulated by a State commission" (as is the case with petitioner).

[*] See also Hearings, House Committee on Interstate and Foreign Commerce, on H. R. 5423 (74th Cong., 1st Sess.), p. 2170; Hearings, Senate Committee on Interstate Commerce, on S. 1725 (74th Cong., 1st Sess.), pp. 265, 275, 347. During the debates, Representative Lea said (79 Cong. Rec. 10370–79): "One of the most important features in this measure, as I view it, is that referring to accounts. The theory of this bill is to provide a unified accounting system

the Commission to publish information secured under its broad investigatory powers.

It is noteworthy that Congress did not make provision for a period of grace in which companies might decide whether to continue interstate operations subject to the obligations of the Act or to cease such operations and avoid the requirements of the Act." Yet, if petitioner's view were to prevail, petitioner will have had a period of grace from August 26, 1935, until June, 1941, when the G. P. 1 and 2 connections at Winsted were terminated. For more than five years, petitioner will have enjoyed all the benefits of an interstate business (which the Congress has declared a business affected with a public interest), without having performed any of the obligations imposed upon such a business by the Act. In effect, then, petitioner will have postponed the effective date of the Act by its own action, from August 1935 to June 1941."

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for the public utilities of the United States. It would provide a common language for accounting methods and meanings. It would help to standardize accounting methods and give stability and certainty to utility values."

"The bill as passed by the Congress was presented to the President on August 24, 1935, was approved and signed by the President on August 26, 1935, and became effective immediately. 79 Cong. Rec. 14690-14691.

"With respect to petitioner's tactics, the Commission said (R. I, 72):

"* * * Respondent seems to have assumed that it had a choice of policies: (1) it could comply with all requirements under the Act until it should have severed these interconnections and thereby have ceased to own or operate facili-

B. Petitioner's East Hampton and Winsted facilities were subject to the jurisdiction of the Commission until June 1939 and June 1941, respectively

All of the considerations which justify the Commission's finding of jurisdiction over the Bristol facilities are equally applicable (except with regard to the synchronous condenser) to the East Hampton and Winsted facilities, and need not be repeated here. The facilities at the Winsted district included a *step-up* substation, and a 10-mile double-circuit, 27,000-volt line, in addition to a step-down substation; and the facilities at the East Hampton district included a 12-mile, 13,800-volt line in addition to three step-down substations. (See Diagram, Appendix C, *infra*, p. 69.)

C. Petitioner's Montville-Groton facilities were subject to the Commission's jurisdiction until February 1941

Petitioner admits that throughout the period from August 26, 1935, when the Act took effect,

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ties for the transmission or sale of electric energy in interstate commerce; or (2) it could carefully watch the administration of the Act in practice; could postpone outright refusal to comply by a temporizing attitude of responding in some fashion to those requirements of the Commission which did not involve any issue deemed important, thus deferring as long as possible a showdown on the jurisdictional question; and in the meantime it could move as rapidly as circumstances would permit and the assiduity (and availability of funds) of the Commission should dictate, to eliminate interconnections on which the Commission might, in practice, hold it to be a 'public utility' under the Act.

"That is to say, Respondent appears to have assumed that it had a choice of obeying the law or avoiding being caught. Respondent chose to try the latter alternative. * * *"

until February 1941, electric energy was transmitted from Groton Long Point, Connecticut, and thereafter distributed and sold to the public on Fishers Island, New York, and that petitioner's facilities in Connecticut were the only possible source of that energy (Br. 53–54; R. III, 642–643, 737; R. II, 357, 360–361; cf. R. II, 462–464). Furthermore, petitioner does not challenge the finding (R. I, 64) that its facilities for supplying that energy were "transmission facilities." Although all the elements of coverage under the Act would thus be present (*Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U. S. 61), petitioner argues that these facilities are exempt from the Commissioner's jurisdiction because (1) they were used in connection with the sale of energy to a municipal corporation, and (2) the resale of the energy by the Borough to Fishers Island should be disregarded on the theory of *de minimis non curat lex* (Br. 53–59). We submit that these contentions were properly rejected by the court below.

(1) Petitioner argues that the Act exempts sales to municipalities from regulation, and therefore that Congress must also have intended to exempt facilities for transmission in connection with such sales. Section 201 (b) of the Act, however, expressly grants jurisdiction to the Commission not only over "facilities (1) for interstate *transmission* but also—and *disjunctively*—over facilities (2) for interstate wholesale *sales*." *Hartford*

Electric Light Company v. *Federal Power Commission*, 131 F. (2d) 953, 961 (C. C. A. 2), certiorari denied, 319 U. S. 741. This wording, according to the Senate Committee, was employed in order "to make plain that it includes interstate transmission where there is no sale." S. Rep. No. 621 (74th Cong., 1st Sess.), p. 19. Petitioner's conceded ownership of facilities for the interstate transmission of electric energy is sufficient in itself, therefore, to support the jurisdiction of the Commission. *Jersey Central Power & Light Company* v. *Federal Power Commission*, 319 U. S. 61. The ownership and operation of facilities for interstate wholesale sales is thus a wholly independent ground of jurisdiction (*Hartford Electric Light Co.* v. *Federal Power Commission*, *supra*). Accordingly, facilities for interstate transmission—an adequate ground for jurisdiction—cannot be exempted from the Act merely because an additional ground for jurisdiction—facilities for sales—may not be present.

In any event, petitioner's sales to the Borough of Groton were properly held by the Commission to be within the scope of the Act, thereby rendering petitioner's facilities for such sales subject to the jurisdiction of the Commission (R. I, 78). The Commission has consistently construed the Act as applicable to interstate wholesale sales to municipalities, see *City of Los Angeles* v. *Nevada-California Electric Corp.*, 32 P. U. R. (NS) 190, 196-199; *Re Otter Tail Power Company*, 33

P. U. R. (NS) 257, 259–262. This interpretation of the Act by the agency charged with its administration is entitled, of course, to great weight. *Norwegian Nitrogen Products Co.* v. *United States*, 288 U. S. 294; *United States* v. *American Trucking Associations*, 310 U. S. 534, 549.

It is true that the Act, if read literally, would exclude sales to municipalities,* but this case would appear to be a proper one for application of the accepted rule that "Where the plain meaning of words used in a statute produces an unreasonable result, 'plainly at variance with the policy of the legislation as a whole,' [this Court] may follow the purpose of the statute rather than the literal words. *United States* v. *American Trucking Associations*, 310 U. S. 534, 543, and cases cited." *United States* v. *Rosenblum Truck Lines*, 315 U. S. 50, 55.

Exemption of sales to municipalities would produce an unreasonable result, for, as the Commission stated in *Re Otter Tail Power Company*, 33 P. U. R. (NS) 257, 260, it would mean that "a

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* Section 201 (b) confers jurisdiction over "the sale of electric energy at wholesale in interstate commerce . . ." and Section 201 (d) defines the term "sale of electric energy at wholesale" as "a sale of electric energy to any person for resale." Section 3 (6) of the Act defines "person" as "an individual or a corporation" and "corporation" is defined in turn by Section 3 (3) as not including "'municipalities' as hereinafter defined." Municipality is defined in Section 3 (7) as a "political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power."

utility may not discriminate in rates charged private persons or corporations, but is at complete and unfettered liberty to indulge in the rankest discrimination as between municipalities, or as between private customers and municipalities, receiving the same service." It is hardly likely that Congress intended to deprive consumers served by the thousands of municipally owned distribution systems, of protection from unjust and unreasonable interstate rates. Such a result would be completely at variance with the basic purpose of the rate provisions of the Act, which were designed to "fill the gap" in rate regulation left by *Public Utilities Commission* v. *Attleboro Steam & Electric Company*, 273 U. S. 83. See *Jersey Central Power & Light Company* v. *Federal Power Commission*, 319 U. S. 61, 67–68, 71, 80–81." With this purpose even critics of the proposed legislation were in agreement."

" Superficially it might appear that "filling the gap" on sales to municipalities would be a futile thing with respect to the energy resold by municipalities at wholesale, since the resale of the energy is exempted from the Act. But sales of energy in interstate commerce by municipalities were recognized to be of rare occurrence; and in any event not for purposes of private profit, so as to fall within the normal ambit of rate regulation, Hearings, House Committee on Interstate and Foreign Commerce, on H. R. 5423 (74th Cong., 1st Sess.), pp. 569, 570, 2061–2062; Hearings, Senate Committee on Interstate Commerce, on S. 1725 (74th Cong., 1st Sess.), p. 256.

" Hearings, House Committee on Interstate and Foreign Commerce, on H. R. 5423 (74th Cong., 1st Sess.), pp. 647–48, 851, 1059, 1068, 1560–61, 1612, 1614, 1622, 1779; Hearings,

The definition of wholesale sales, in the bill passed by the Senate, did not exclude sales to municipalities." It was in the bill reported by the House that the present wording of Section 201 (d) first made its appearance, but the House report, in commenting on this definition, merely stated that "A wholesale transaction is defined to mean the sale of electric energy for resale * * *." H. Rep. No. 1318 (74th Cong., 1st Sess.), p. 8. Significantly, this restatement of the definition contained no reference whatsoever to "person"; and the report expressed no purpose that sales to municipalities were to be exempted. Where an exemption was intended, the report expressly stated so. Thus, immediately following the restatement of the definition of wholesale sales, the report added "and the Commission is given no jurisdiction over local rates even where the electric energy moves in interstate commerce." The fact that the House definition was generally intended to broaden the Senate definition which it superseded[21] lends additional support to the

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Senate Committee on Interstate Commerce, on S. 1725 (74th Cong., 1st Sess.), pp. 348, 413, 478, 482, 511, 621, 729, 731, 739, 756–57, 768.

[21] The Senate definition (introduced into the bill by amendment from the Senate floor, 79 Cong. Rec. 8858) provided that "Electric energy shall be held to be sold at wholesale in interstate commerce within the meaning of this Part only when it is sold for resale after its transmission in interstate commerce or before such transmission if the same is thereafter so transmitted."

view that "person" was not used in a restrictive sense."

To construe Section 201 (f) as depriving municipalities of the protection accorded to private purchasers under the Act, would fail to give substantial effect to other provisions of the Act, e. g., Section 306, allowing a municipality to file a complaint on account of "anything done or omitted to be done by any licensee or public utility in contravention of the provisions of this Act,"[*] and Section 313 (a), permitting review of Commission orders at the behest of any "aggrieved" municipality.[*] As the Commission observed in

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[*] The Senate definition (see note 26, p. 22, *supra*) covered wholesale sales before and after interstate transmission, but omitted sales made in the course of such transmission, and would have made the Act inapplicable to the very sale which was involved in *Public Utilities Commission v. Attleboro Steam & Electric Co.*, 273 U. S. 83. The definition adopted by the House eliminated this defect.

[*] The Conference Committee adopted the House definition without comment. H. Rep. No. 1903 (74th Cong., 1st Sess.).

[*] Contrary to petitioner's assertion (Br. 35-36), the express reference in Section 306 to "licensee or public utility" establishes that the right of a municipality to complain extends to wrongs committed in contravention of Part II as well as Part I of the Act.

[*] It is true that the Senate Report conceived Section 201 (f)—then numbered 201 (e)—as also explaining the fact that the Commission was not authorized to "compel private utilities to establish connection or exchange power with public plants." S. Rep. No. 621 (74th Cong., 1st Sess.), p. 19. But this intention to exclude municipalities from the benefits of the interconnection provisions had been expressed often in the legislative history of the Act, and was

Re Otter Tail Power Company, supra, "Since the most serious, if not the only real complaint a municipality could have against a public utility would involve the rates charged it for electric energy at wholesale (the Commission has no power to regulate the retail rates of a public utility), it is most persuasive Congress intended that we have jurisdiction over such wholesale rates."

(2) Petitioner further contends that since the amount of energy which was transmitted to Fishers Island was approximately .2% of all the energy generated and received by petitioner, a rule of *de minimis* should prevent such sales from furnishing a basis for the Commission's jurisdiction. (Br. 57.) Petitioner ignores the fact that Fishers Island, Fort Wright, and a Coast Guard station, as well as a civilian population varying from 700 in the winter to 3,000 in the summer, were entirely dependent upon the energy generated by petitioner, and that a business grossing $60,000 annually was

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present in the bill as originally introduced by the Commission. Thus, in H. R. 5423 and S. 1725, the common carrier section (Sec. 202 (a)) and the section relating to extension of facilities (Sec. 202 (b)) each employed the word "person" for the purpose of withholding their benefits from municipalities; whereas, the term "person" significantly was not employed in the rate sections (Secs. 202 (b) and 206 (a)) of H. R. 5423 and S. 1725, which were made applicable to "any service" furnished by a public utility. Hearings, House Committee on Interstate and Foreign Commerce, on H. R. 5423 (74th Cong., 1st Sess.), pp. 395, 397–98, 532, 564; Hearings, Senate Committee on Interstate Commerce, on S. 1725 (74th Cong., 1st Sess.), p. 260.

done in the transmission and local distribution of that energy (Ex. 16, R. III, 1049–1050).

In any event, Section 201 (b) of the Act, defining the facilities subject to the jurisdiction of the Commission, does not contain any minimum requirement as to volume or amount. This is to be contrasted with Section 203 (a) which expressly exempts facilities of a value less than $50,000 from the requirement that disposal of facilities subject to the jurisdiction of the Commission be approved by the Commission. Cf. 49 U. S. C. 304 (a) (4a). Clearly, Congress knew how to impose a minimum requirement when it so intended, and its failure to provide one in Section 201 (b) shows that none was intended."

" Federal jurisdiction under the commerce clause is not dependent upon volume (*National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, 606; *Valvoline Oil Co.* v. *United States*, 308 U. S. 141, 147), or ratio to total business (*Public Utilities Commission* v. *Attleboro Steam & Electric Co.*, 273 U. S. 83, 90).

CONCLUSION

It is respectfully submitted that the decision below should be affirmed.

CHARLES FAHY,
Solicitor General.

FRANCIS M. SHEA,
Assistant Attorney General.

DAVID L. KREEGER,
Special Assistant to the Attorney General.

JOSEPH B. GOLDMAN,
Attorney.

CHARLES V. SHANNON,
General Counsel,

HOWARD E. WAHRENBROCK,
Assistant General Counsel,

HOWELL PURDUE,
Attorney,
Federal Power Commission.

DECEMBER 1944.

APPENDIX A

The pertinent provisions of the Federal Power Act of 1935 (49 Stat. 838, 16 U. S. C. 792 *et seq.*) are as follows:

SEC. 3. The words defined in this section shall have the following meanings for purposes of this Act, to wit:

* * * * *

(3) "corporation" means any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing. It shall not include "municipalities" as hereinafter defined;

(4) "person" means an individual or a corporation;

* * * * *

(7) "municipality" means a city, county, irrigation district, drainage district, or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power;

SEC. 201. (a) It is hereby declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to generation to the extent provided in this Part and the Part next following and of that part of such business which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in inter-

state commerce is necessary in the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.

(b) The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line. The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this Part and the Part next following, over facilities used for the generation of electric energy or over facilities used in local distribution or only for transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.

(c) For the purpose of this Part, electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof; but only insofar as such transmission takes place within the United States.

(d) The term "sale of electric energy at wholesale" when used in this Part means a sale of electric energy to any person for resale.

(e) The term "public utility" when used in this Part or in the Part next following means any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part.

(f) No provision in this Part shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

SEC. 202. (a) For the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and it may at any time thereafter, upon its own motion or upon application, make such modifications thereof as in its judgment will promote the public interest. Each such district shall embrace an area which, in the judgment of the Commission, can economically be served by such interconnected and coordinated electric facilities. It shall be the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts. Before establishing any such district and fixing or modifying the boundaries thereof the Commission shall give notice to the State commission of each State situated wholly or in part within such district, and

shall afford each such State commission reasonable opportunity to present its views and recommendations, and shall receive and consider such views and recommendations.

(b) Whenever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such public utility thereby) to establish physical connection of its transmission facilities with the facilities of one or more other persons engaged in the transmission or sale of electric energy, to sell energy to or exchange energy with such persons: *Provided*, That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel such public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers. The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them.

* * * * * *

SEC. 203. (a) No public utility shall sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $50,000, or by any means whatsoever, directly or indirectly, merge or

consolidate such facilities or any part thereof with those of any other person, or purchase, acquire, or take any security of any other public utility, without first having secured an order of the Commission authorizing it to do so. Upon application for such approval the Commission shall give reasonable notice in writing to the Governor and State commission of each of the States in which the physical property affected, or any part thereof, is situated, and to such other persons as it may deem advisable. After notice and opportunity for hearing, if the Commission finds that the proposed disposition, consolidation, acquisition, or control will be consistent with the public interest, it shall approve the same.

* * * * *

SEC. 204. (a) No public utility shall issue any security, or assume any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person, unless and until, and then only to the extent that, upon application by the public utility, the Commission by order authorizes such issue or assumption of liability. The Commission shall make such order only if it finds that such issue or assumption (a) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes. The provisions of this section shall be effective six months after this Part takes effect.

(b) The Commission, after opportunity for hearing, may grant any application under this section in whole or in part, and with such modifications and upon such terms and conditions as it may find necessary or appropriate, and may from time to time, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as it may find necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, and extent to which, or the conditions under which, any security so theretofore authorized or the proceeds thereof may be applied, subject always to the requirements of subsection (a) of this section.

* * * * *

(f) The provisions of this section shall not extend to a public utility organized and operating in a State under the laws of which its security issues are regulated by a State commission.

SEC. 205. (a) All rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

* * * * *

SEC. 206. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public

utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order.

(b) The Commission upon its own motion, or upon the request of any State commission whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transmission of electric energy by means of facilities under the jurisdiction of the Commission in cases where the Commission has no authority to establish a rate governing the sale of such energy.

SEC. 207. Whenever the Commission, upon complaint of a State commission, after notice to each State commission and public utility affected and after opportunity for hearing, shall find that any interstate service of any public utility is inadequate or insufficient, the Commission shall determine the proper, adequate, or sufficient service to be furnished, and shall fix the same by its order, rule, or regulation: *Provided*, That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel the public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers.

SEC. 208. (a) The Commission may investigate and ascertain the actual legitimate cost of the property of every public

utility, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation, and the fair value of such property.

(b) Every public utility upon request shall file with the Commission an inventory of all or any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction.

* * * * *

SECTION 301. (a) Every licensee and public utility shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this Act, including accounts, records, and memoranda of the generation, transmission, distribution, delivery, or sale of electric energy, the furnishing of services or facilities in connection therewith, and receipts and expenditures with respect to any of the foregoing: *Provided, however,* That nothing in this Act shall relieve any public utility from keeping any accounts, memoranda, or records which such public utility may be required to keep by or under authority of the laws of any State. The Commission may prescribe a system of accounts to be kept by licensees and public utilities and may classify such licensees and public utilities and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays and r ceipts

shall be entered, charged, or credited. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof.

* * * * *

SEC. 307. (a) The Commission may investigate any facts, conditions, practices, or matters which it may find necessary or proper in order to determine whether any person has violated or is about to violate any provision of this Act or any rule, regulation, or order thereunder, or to aid in the enforcement of the provisions of this Act or in prescribing rules or regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation concerning the matters to which this Act relates. The Commission may permit any person to file with it a statement in writing under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of investigation. The Commission, in its discretion, may publish or make available to State commissions information concerning any such subject.

* * * * *

SEC. 309. The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this Act. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this Act; and may prescribe

the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons on matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable hours.

SEC. 313. (a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this Act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order.

* * * * *

(b) Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the Circuit Court of Appeals of the United States for any circuit wherein the licensee or public utility to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the

District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. * * * The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive.

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APPENDIX B

Electric Plant Accounts Instruction No. 16 of the Uniform System of Accounts, prescribed for public utilities and licensees subject to the provisions of the Federal Power Act (revised to December 31, 1936), provides as follows:

16. *Transmission and Distribution Plant.* For the purpose of this system of accounts:

A. "Transmission system" means: (1) All land, conversion structures, and equipment employed at a primary source of supply (i. e., generating station, or point of receipt in the case of purchased power) to change the voltage or frequency of electric energy for the purpose of its more efficient or convenient transmission; (2) all land, structures, lines, switching and conversion stations, high tension apparatus, and their control and protective equipment between a generating or receiving point and the entrance to a distribution center or wholesale point; and (3) all lines and equipment whose primary purpose is to augment, integrate, or tie together the sources of power supply.

B. "Distribution system" means all land, structures, conversion equipment, lines, line transformers, and other facilities employed between the primary source of supply (i. e., generating station, or point of receipt in the case of purchased power) and of delivery to customers, which are not includible in transmission system, as defined

in Paragraph A, whether or not such land, structures and facilities are operated as part of a transmission system or as part of a distribution system.

NOTE.—Stations which change the energy from transmission to distribution voltage shall be classified as distribution stations.

C. Where poles or towers support both transmission and distribution conductors, the poles, towers, anchors, guys, and rights-of-way shall be classified as transmission system. The conductors, cross arms, braces, grounds, tie-wire, insulators, etc., shall be classified as transmission or distribution facilities, according to the purpose for which used.

D. Where underground conduit contains both transmission and distribution conductors, the underground conduit and rights-of-way shall be classified as distribution system. The conductors shall be classified as transmission or distribution facilities according to the purpose for which used.

E. Land (other than rights-of-way) and structures used jointly for transmission and distribution purposes shall be classified as transmission or distribution according to the major use thereof.

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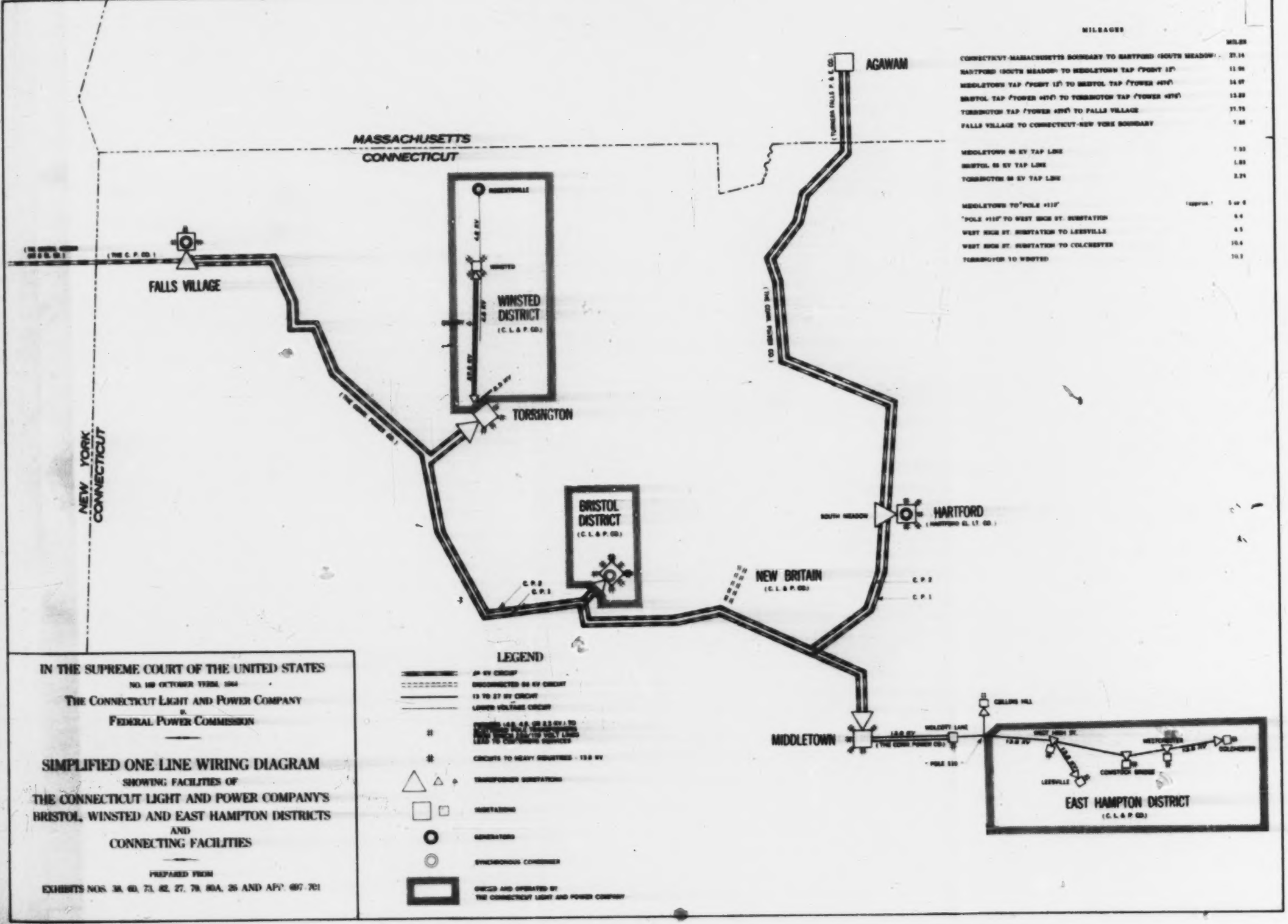


IN THE SUPREME COURT OF THE UNITED STATES

NO. 169 OCTOBER TERM, 1944

THE CONNECTICUT LIGHT AND POWER COMPANY

v.

FEDERAL POWER COMMISSION

SIMPLIFIED ONE LINE WIRING DIAGRAM

SHOWING FACILITIES OF

THE CONNECTICUT LIGHT AND POWER COMPANY'S

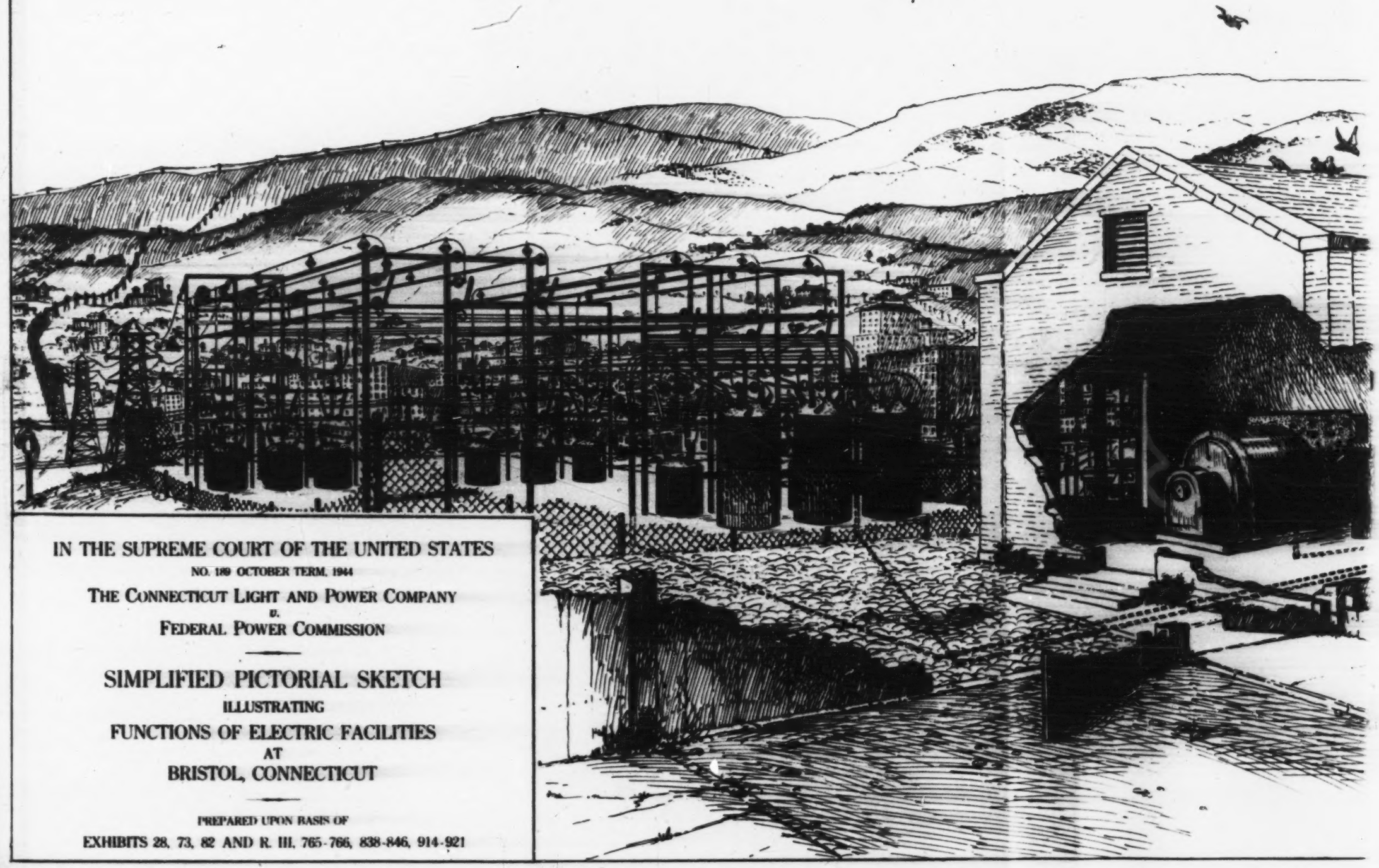
BRISTOL, WINSTED AND EAST HAMPTON DISTRICTS

AND

CONNECTING FACILITIES

PREPARED FROM

EXHIBITS NOS. 38, 60, 73, 82, 27, 70, 80A, 26 AND APP. 697-701



IN THE SUPREME COURT OF THE UNITED STATES

NO. 189 OCTOBER TERM, 1944

THE CONNECTICUT LIGHT AND POWER COMPANY

v.

FEDERAL POWER COMMISSION

SIMPLIFIED PICTORIAL SKETCH

ILLUSTRATING

FUNCTIONS OF ELECTRIC FACILITIES

AT

BRISTOL, CONNECTICUT

PREPARED UPON BASIS OF

EXHIBITS 28, 73, 82 AND R. III, 765-766, 838-846, 914-921

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